

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CAROLYN M. DAVIS,)	
)	
Plaintiff,)	4:06CV3291
)	
v.)	
)	
SOCIAL SECURITY)	ORDER
ADMINISTRATION, Michael J. Astrue,)	
Commissioner,)	
)	
Defendant.)	

This matter is before the court on plaintiff's "Waiver of Claim for Attorney's Fee under [42 U.S.C. § 406\(b\)](#) and Request that Withheld Funds be Released to Plaintiff Forthwith," which the court construes as a motion for release of funds, [Filing No. 40](#). Plaintiff seeks funds in the amount of \$6,062.00 which have been withheld by the Commissioner toward the potential necessity of paying an attorney's fee under 42 U.S.C. § 406(b). See Filing No. 40, Exhibit A, Notice of Award at 3.

The Social Security Act authorizes a federal district court to award attorney fees for representation before the court under 42 U.S.C. § 406(b). Congress enacted § 406(b) to "protect claimants against inordinately large fees and also to ensure that attorneys representing successful claimants would not risk nonpayment of appropriate fees." [*Gisbrecht v. Barnhart, 535 U.S. 789, 805 \(2002\)*](#). Fees under § 406(b) satisfy a client's obligation to counsel and, therefore, attorney fees are withheld by the Commissioner and paid directly to the attorney out of past due benefits awarded. 42 U.S.C. § 406(b); [20 C.F.R. § 404.1720 \(b\)\(4\) \(2006\)](#).

Courts may award attorney fees to prevailing claimants and their attorneys under both the Equal Access to Justice Act ("EAJA"), [28 U.S.C. § 2412](#), and 42 U.S.C. § 406(b).

Gisbrecht, 535 U.S. at 796. Double recovery, however, is not permitted. *Id.* When both awards are granted, the attorney must refund the lesser award to the client. *Id.*

Plaintiff's counsel has been awarded fees under the EAJA in the amount of \$6,400.00. Filing No. 39. Plaintiff's counsel, Stephen L. Speicher, waives any claim for attorney fees under 42 U.S.C. § 406(b), and requests that the withheld funds be released to plaintiff forthwith. See Filing No. 40, Waiver and Request at 2. The defendant has not responded to the plaintiff's pleading. Because plaintiff's counsel has already been compensated to the full extent allowed under the EAJA and 42 U.S.C. § 406(b), there is no need for the Commissioner to withhold funds to pay an attorney fee claim. Accordingly,

IT IS ORDERED:

1. Plaintiff's motion for release of funds (Filing No.40) is granted.
2. Stephen L. Speicher's waiver of any claim to a fee computed and awarded under 42 U.S.C. § 406(b) is accepted.
3. The Commissioner of Social Security is ordered to release to plaintiff funds withheld for payment of attorney fees in the amount of \$6,062.00.

DATED this 18th day of August, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge